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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

5 JAMES E. COHAN,
6 Plaintiff,

7 v.

8 JOSEPH LOMBARDO, et al.,
9 Defendants.

Case No. 2:17-cv-01651-JCM-NJK

ORDER

[Docket Nos. 34, 35]

10 Pending before the Court is Plaintiff's motion to be allowed to refile a claim. Docket No.
11 34. Plaintiff previously filed two amended complaints in this action. Docket Nos. 14, 22-1.
12 Plaintiff's first amended complaint was dismissed with leave to amend. Docket No. 16. The
13 undersigned issued a report and recommendation that Plaintiff's second amended complaint and
14 this case be dismissed. Docket No. 23. The order adopting the report and recommendation noted
15 that Plaintiff did not object to the dismissal without prejudice. Docket No. 30 at 2 (citing Docket
16 No. 24).

17 Dismissal of a case without prejudice preserves a plaintiff's right to refile his claim. *See,*
18 *e.g., Com. Space Mgmt. Co., Inc. v. Boeing Co., Inc.*, 193 F.3d 1074, 1077 (9th Cir. 1999) (internal
19 citations omitted). However, after a case has been dismissed without prejudice, a plaintiff must
20 file his complaint in a new case and not refile it in the dismissed case. *E.g., Frost v. Nat'l Sec.*
21 *Agency*, 2018 WL 6822632, *2 (N.D. Cal. 2018); *Stine v. Wiley*, 2010 WL 3516634, *1 (D. Colo.
22 2010).

23 Accordingly, Plaintiff's motion to refile a claim is **DENIED**. Docket No. 34. Plaintiff's
24 application to proceed *in forma pauperis* is **DENIED** as moot. Docket No. 35. This denial does
25 not affect Plaintiff's ability to file his complaint in a newly initiated case.

26 IT IS SO ORDERED.

27 Dated: October 20, 2022

28 
Nancy J. Koppe
United States Magistrate Judge